

THIRD DIVISION  
September 28, 2011

No. 1-10-0064

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 06 CR 27926
	)	
TYRONE DAVIS,	)	Honorable
	)	Thomas J. Hennelly,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Steele and Justice Salone concurred in the judgment.

**ORDER**

*HELD:* Where the witnesses testified positively and credibly with regard to the elements of the crimes charged, the evidence was sufficient to convict despite some inconsistencies and conflicts in their testimony.

¶ 1 Following a bench trial, defendant Tyrone Davis was convicted of five counts of home invasion, five counts of armed robbery, four counts of aggravated unlawful restraint, and one count each of armed violence, residential burglary, attempted armed robbery, attempted aggravated robbery, aggravated unlawful use of a weapon, and unlawful use of a weapon by a felon. He was

sentenced to natural life in prison as an habitual criminal. On appeal, defendant contends that his convictions must be reversed because the State's case rested almost entirely upon the testimony of three unreliable eyewitnesses and the contradictory testimony of police officers. For the reasons that follow, we affirm.

¶ 2 Defendant's convictions arose from the events of November 28, 2006. In brief, on that day, defendant and codefendant, Joey Brandon, approached two men and a toddler as they were getting out of a car in an alley. Defendant and codefendant forced the group to their second-floor apartment at gunpoint. There, they ordered the group and the apartment's other occupants to the floor, duct-taped and kicked one of them, and took money, jewelry, and cell phones from them. When police arrived at the scene, defendant and codefendant fled, but were quickly apprehended with stolen property in their possession.

¶ 3 The apartment at issue was the residence of Robert Williams; his girlfriend Lisa Williams; her children, Lisa Williams, Octavia Simmons, Jerome Simmons, and Dwayne Simmons; her two-year-old grandson, Andrew Collins; and her nephew, Gerald Simmons. At trial, the State presented testimony from Robert Williams, Gerald Simmons, both Lisa Williamses, and three police officers. The apartment in question was located at 1522 South Avers Avenue, Chicago. A chain-link fence separated 1522 from the neighboring building at 1520 South Avers, and an approximately six-foot wooden fence separated 1520 from a construction site at 1518 South Avers.

¶ 4 At trial, Robert Williams testified that around 2:30 p.m., he, Gerald Simmons, and Andrew Collins were returning home from a trip to the store. They parked in the alley behind the building where they lived. As they were getting out of the car, they were approached by two men, later identified as defendant and codefendant. Robert, who did not know either of the men, started toward the building. He heard Gerald talking and then saw defendant draw a handgun. Defendant and Gerald exchanged words, after which defendant punched Gerald in the face.

¶ 5 Robert testified that defendant ordered them inside. He tried to reason with defendant and codefendant, and even offered them \$50, which codefendant pocketed, but the men still ordered them upstairs. Gerald went first and codefendant brought up the rear. In the middle were defendant, who was aiming the gun at Gerald, and Robert, who was holding Andrew's hand. At the top of the back stairs, codefendant used Robert's keys to unlock the door.

¶ 6 Defendant opened the door and the group went inside. In the kitchen area, defendant, who was still holding the gun, ordered everyone to lie down on the floor. Everyone present followed the order: Robert; Gerald; Lisa Williams; Lisa's brother, Ronnie; and Lisa's friend, Tameka. When Gerald resisted, defendant kicked him in the face and had codefendant duct tape his hands behind his back.

¶ 7 Robert testified that defendant told Lisa to remove her jewelry. When asked what kind of jewelry she gave defendant, Robert answered that it was a gold necklace and "I think a couple rings." Defendant then ordered Lisa into her bedroom. While Lisa and defendant were in another room, Robert's cell phone rang and codefendant took it from him.

¶ 8 About that time, Lisa and defendant came out of the bedroom and Robert heard loud banging on the front door. When the knocking started, defendant and codefendant moved quickly out the back door. Shortly thereafter, Robert saw the police arrest codefendant in front of the building. He also saw defendant in police custody.

¶ 9 Robert testified that he saw his cell phone again at the police station. In court, he identified a photograph of three cell phones: his, Lisa's, and Ronnie's. He acknowledged that a photograph of their belongings that had been taken during the robbery did not depict any rings. When asked whether he gave defendant \$50 or a \$50 bill, he stated, "It was \$50." However, in a statement he had earlier given to assistant State's Attorneys, he said he gave defendant a \$50 bill.

¶ 10 Gerald Simmons testified that he was currently in custody of the Cook County sheriff due to a recent conviction for burglary of an automobile. On the day in question, he, Robert Williams, and Andrew Collins were getting out of a car behind their residence when two men he did not know, later identified as defendant and codefendant, approached them. Defendant grabbed Gerald's arm, put a handgun to his side, pushed him through the gate, and said, "[D]on't say nothing and let's go up the steps." Gerald and Robert followed defendant's directions. Robert gave a \$50 bill to defendant. At the top of the stairs, defendant took \$50 from Gerald's pockets and took the apartment keys from Robert. He gave the keys to Gerald, who unlocked and opened the door. Defendant then pushed Gerald and Robert inside.

¶ 11 In the kitchen, defendant ordered Gerald, his aunt Lisa, Robert, and Andrew to lie on the floor. Codefendant duct-taped Gerald's hands. Gerald testified that Tameka and Ronnie were in the front room. He could not see them, but he stated that Tameka was on the floor. Defendant and codefendant then searched the apartment. Gerald saw defendant searching Lisa Williams' room. Lisa was on the kitchen floor the entire time. Defendant took Gerald's jacket and one of the men took his cell phone. Gerald estimated that defendant and codefendant were in the apartment for about 30 minutes before the police kicked down the front door, at which point defendant and codefendant ran out the back.

¶ 12 Gerald testified that defendant hit him both outside and inside the apartment. He stated that defendant "busted" his bottom lip and that defendant kicked the back of his head when he was lying on the kitchen floor. Gerald acknowledged that earlier, he had told an assistant State's Attorney that defendant hit him with the gun. Finally, when identifying pictures of items recovered by the police, Gerald stated that the scanner was his "auntie's."

¶ 13 Lisa Williams testified that on the day in question, she was in her kitchen when she heard the back door open. A few seconds later, Gerald Simmons came into the room with a man she did

not know, later identified as defendant. Defendant had Gerald by the arm and was holding a gun. Then Robert Williams came into the room carrying Andrew, followed by a man later identified as codefendant. Once in the kitchen, defendant ordered everyone to the floor. Lisa, Robert, and Gerald lay down in the kitchen. Her brother, Ronnie, her friend, Tameka, and her nephew's girlfriend, Keisha, lay down in the front room. Still holding the gun, defendant started going through everyone's pockets and ordered Lisa to take off her jewelry. She gave him a necklace and bracelet. At some point after everyone was on the floor, defendant kicked Gerald. Lisa saw codefendant take duct tape from his pocket and heard defendant tell him to tape Gerald. Defendant then ordered her into her bedroom. There, she gave him her son's scanner, more jewelry, and about \$100.

¶ 14 Lisa testified that she and defendant went back into the kitchen. She saw that Gerald had duct tape on his arm. About that time, Lisa heard "bammimg," "like somebody trying to kick in my front door." Defendant and codefendant walked out the back door "like they lived in the apartment." Lisa estimated that defendant and codefendant were in the apartment for about 10 minutes. She was sure it was not 30 minutes.

¶ 15 At the police station, Lisa saw the scanner and her jewelry. She testified that she told the police rings were taken from her. However, she acknowledged in court that the photographs of recovered items did not include any rings.

¶ 16 The State's next witness was Lisa Williams' teenage daughter, also named Lisa Williams. Lisa testified that about 2:30 p.m. on the day in question, she was in her room with her door closed when she heard voices she did not recognize. She heard her son, Andrew, crying, and also heard Robert say, "[T]his is all I got." Lisa called the police, who arrived within two or three minutes. Lisa did not come out of her room until after the police arrived.

¶ 17 Chicago police officer Danny Ward testified that at about 2:30 p.m. on the day in question, he responded to a call of a robbery in progress. He called for backup, and once other officers arrived

at the scene, he and Officer Christopher Jania attempted to forcibly enter the apartment by taking turns kicking the front door. When a third officer contacted them via radio, Officer Ward and Officer Jania ran down the stairs and into the back yard of the building next door. There, Officer Jania recovered a handgun and Officer Ward apprehended codefendant. Officer Ward testified that he saw defendant run across the yard and along the side of the building toward the street. He next saw defendant two or three minutes later, when he was brought back to the scene by another responding unit.

¶ 18 Officer Ward testified that he searched codefendant and recovered duct tape, jewelry, a scanner, and cell phones. Gerald Williams told him that he was missing a \$50 bill. According to Officer Ward, a \$50 bill was recovered, but he acknowledged that no such bill appeared in the photographs of the recovered property. To his knowledge, pictures were taken of all the property that was recovered.

¶ 19 Chicago police officer John O'Keefe testified that he and his partner, Officer Jania, responded to Officer Ward's call for backup. Officer Jania met up with Officer Ward in the front of the building, and Officer O'Keefe started toward the back. The route he used took him through the construction site two lots north of the building. Officer O'Keefe testified that as he was moving through the lot where the construction was taking place, he saw defendant and codefendant coming out of the back door of the apartment. He radioed the other officers with this information. Because there was a "rise" in the ground where he was standing, Officer O'Keefe was able to see defendant and codefendant descend the stairs. Defendant was carrying a black and red jacket in front of him.

¶ 20 Officer O'Keefe briefly lost sight of defendant and codefendant. As he moved toward the alley, he saw codefendant jump on top of a wooden fence and look around. When codefendant saw Officer O'Keefe, he jumped back down. Officer O'Keefe testified that he looked over the fence and saw, on the ground, "that same black jacket I had seen him exiting the building with." Officer

O'Keefe continued moving to the alley. From there, he saw Officers Ward and Jania at the construction site and watched them scale the fence.

¶ 21 Officer O'Keefe testified that defendant ran toward the street. The next time he saw defendant was in front of the building in question, after he had been detained. Officer O'Keefe did not see defendant holding a gun.

¶ 22 Chicago police officer Christopher Jania testified that he and his partner, Officer O'Keefe, responded to Officer Ward's call of a burglary in process. While Officer O'Keefe went to the rear of the location, Officer Jania and Officer Ward went to the front door and kicked at it in an attempt to get it open. As they were kicking, they received a radio call from Officer O'Keefe reporting that suspects were running out the back.

¶ 23 Officer Jania testified that he and Officer Ward cut through the neighboring construction site at 1518 South Avers to get to the alley. Officer Jania looked back toward the apartment building. He was standing on some mounds of dirt and could see over the wood fence separating the construction lot from 1520 South Avers. From his elevated vantage point, he saw defendant and codefendant climbing over the chain-link fence that separated 1522 from 1520. Defendant was carrying a black jacket. When defendant got over the fence, the jacket dropped and Officer Jania could see he was holding a gun.

¶ 24 Officer Jania testified that codefendant then attempted to climb over the wooden fence. Though codefendant "was positioned over the fence," he did not cross into the construction lot, but dropped back into the yard behind 1520 South Avers. Officer Jania testified that he saw Officer Ward go over the wooden fence into the back yard of 1520 and saw defendant throw his gun to the ground and run toward the street. Officer Jania then jumped the fence. After recovering the handgun, he assisted Officer Ward in apprehending codefendant. Officers Jania and Ward brought

codefendant to the front yard of 1522 South Avers for a show-up. Shortly thereafter, another unit brought defendant back to the scene.

¶ 25 Following closing arguments, the trial court convicted defendant of five counts of home invasion, five counts of armed robbery, four counts of aggravated unlawful restraint, and one count each of armed violence, residential burglary, attempted armed robbery, attempted aggravated robbery, aggravated unlawful use of a weapon, and unlawful use of a weapon by a felon. At a subsequent sentencing hearing, the trial court sentenced defendant to natural life in prison as an habitual criminal.

¶ 26 On appeal, defendant contends that his conviction must be reversed because the State's case rested almost entirely upon testimony of the police officers that was contradictory and testimony of three unreliable eyewitnesses who gave factually irreconcilable accounts of the offense and were all impeached by either their written statements or their inconsistent trial testimony. Defendant argues that the witnesses' separate accounts of the incident are so mutually inconsistent that no rational trier of fact could deem them satisfactory for purposes of conviction. When reviewing the sufficiency of the evidence, the relevant inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 27 Where a guilty finding depends on eyewitness testimony, a reviewing court, keeping in mind that it was the fact finder who saw and heard the witness, must decide whether any fact finder could reasonably accept the witness's testimony as true beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). It is for the finder of fact to judge how flaws in a witness's testimony affect the credibility of the whole. *Cunningham*, 212 Ill. 2d at 283.

¶ 28 Defendant argues that the State's entire case against him is cast into doubt because in order to believe the testimony of one witness, one must discredit the testimony of other State witnesses. He asserts that the witnesses offered markedly contradictory versions of the events that occurred, that their narratives were rife with inconsistencies, and that therefore, his conviction must be reversed.

¶ 29 Among the inconsistencies in testimony identified by defendant are the following: the order in which Robert, Gerald, defendant, and codefendant walked up the back stairs to the apartment; who unlocked and who opened the back door; whether a woman named "Keisha" was in the apartment; whether Lisa remained on the kitchen floor the entire time or went into the bedroom with defendant; the circumstances surrounding the duct-taping of Gerald's hands; whether defendant and codefendant ran or walked out of the apartment; whether any rings or a bracelet were taken from Lisa; whether the scanner belonged to Lisa or to her son; whether defendant kicked Gerald in the face or in the back of the head; whether defendant punched Gerald in the kitchen; whether defendant hit Gerald with the gun; how long defendant and codefendant were inside the apartment; whether any \$50 bills were taken; whether Officer Jania could have seen over the wooden fence; and whether it was defendant or codefendant who was carrying the black jacket.

¶ 30 In announcing its findings in this case, the trial court specifically acknowledged that the State's evidence included "some inconsistencies regarding time and some other things," but stated it did not believe those inconsistencies were significant. The trial court's comments make clear that

it was well aware of the inconsistencies in the State's case and demonstrate that it took these imperfections into account when assessing the credibility of the witnesses and resolving conflicts in the evidence.

¶ 31 We, like the trial court, are mindful of the issues raised by defendant. Nevertheless, the witnesses' testimony regarding the key elements of the offenses was positive and credible. Robert and Gerald positively testified that defendant and codefendant ordered them into the apartment at gunpoint. Robert, Gerald, and Lisa positively testified that defendant and codefendant made them lie down on the floor, that defendant kicked Gerald, and that defendant and codefendant took property from them. The three police officers positively testified that they saw defendant and codefendant during their attempted flight from the scene. Despite the inconsistencies and conflicts raised by defendant, the witnesses' statements, that directly support the elements of the offenses of which the defendant was convicted, could reasonably be accepted by the fact finder who saw the witnesses testify. See *Cunningham*, 212 Ill. 2d at 285.

¶ 32 We have examined the inconsistencies and discrepancies identified by defendant and find that they are of the sort properly resolved by the trial court in its role as the fact finder. We will not substitute our judgment for the trial court's on these matters. See *Brooks*, 187 Ill. 2d at 131. After reviewing the evidence in the light most favorable to the prosecution, we conclude that the evidence was not "so unsatisfactory, improbable or implausible" to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Defendant's challenge to the sufficiency of the evidence fails.

¶ 33 For the reasons explained above, we affirm the judgment of the circuit court of Cook County.

¶ 34 Affirmed.